IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8261 of 2000

with
SPECIAL CIVIL APPLICATION NOS. 8271,9228 OF 2000
AND
CIVIL APPLICATION NO. 7095 OF 2000
IN
SPECIAL CIVIL APPLICATION NO 8261 OF 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANIBHAI VASHRAMBHAI THAKKAR & KEYUR MANIBHAI THAKKAR
Versus
STATE OF GUJARAT THROUGH SECRETARY

Appearance:
SCA No 8261 of 2000 :
MR BHARAT T RAO for Petitioner
Ms. Hansa Punani, AGP for Respondent No. 1
MR AJ PATEL for Respondent No. 4

CA No. 7095 of 2000 in SCA No. 8261 of 2000
Mr. AJ Patel for applicant.
Mr. BT Rao for respondent-original petitioner.
Ms. Hansa Punani,AGP for respondent authorities.

SCA Nos. 8271/2000 and 9228/2000:
Mr. KK Trivedi for petitioners.

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 4.10.2000

CAV JUDGEMENT

In special civil application No. 8261 of 2000, learned advocate Mr. Rao has appeared for the petitioner and Ms. Punani, learned AGP has appeared for the respondent authorities and Mr. Patel has appeared for the other respondents. In Civil Application No. 7095 of 2000, learned advocate Mr. Patel has appeared for the applicant whereas Mr. Rao has appeared for the respondent-original petitioner and Ms. Punani has appeared for the respondent authorities.

In remaining two petitions namely special civil application Nos. 8271 of 2000 and 9228 of 2000, learned advocate Mr. KK Trivedi is appearing for the petitioners.

This group of three petitions involves identical questions of fact and law and civil application No. 7095 of 2000 is arising out of special civil application NO. 8261 of 2000 and, therefore, they are decided and disposed of by this common judgment.

Civil Application NO.7095 of 2000 has been filed by the applicant who is the original respondent No.4 in special civil application no. 8261 of 2000 for vacation of the interim relief granted by this court in the main petition wherein the original petitioner Manibhai Vashrambhai Thakkar has filed the affidavit in reply.

In special civil application No. 8261 of 2000, respondent NO.4 has filed affidavit in reply through one Rajendra Gordhanbhai Patel who is the Vice President of respondent No.4 namely the Karamsad Bandhu Samaj which shall, hereinafter, be referred to as "the Samaj" for the sake of brevity. Against the said affidavit in reply filed by the respondent Samaj, the petitioner has also filed affidavit in rejoinder. No affidavit in reply has been filed by the respondent authorities in this petition.

In special civil application no. 8261 of 2000, rule has been issued by this court on 27th July, 2000 and while issuing rule thereon, interim relief has also been

granted by this court.

Special Civil Application Nos. 8271 of 2000 as well as 9228 of 2000 are at admission stage. Today, with the consent of the learned advocates for the parties, all these petitions have been taken up for final disposal.

Special civil application No. 8261 of 2000 and special civil application no. 8271 of 2000 has been filed by Manibhai Vashram Thakkar and special civil application no. 9228 of 200 has been filed by Dilipbhai Manibhai Thakkar and Keyur Manibhai Thakkar and Manibhai Vashram Thakkar, two sons and father.

In light of the facts that all the three petitions have been filed by the father and sons on the same cause of action and same subject matter. In special civil application No. 8261 of 2000, the petitioner has prayed for quashing and setting aside the order passed by the Government on 17th May, 2000 allotting the land to the private party which is contrary to the Government's own resolution dated 15th April, 1999 and also against the objects of the Repeal Act,1999 and for declaring that the action of the Government is arbitrary. It is also necessary to mention one important aspect of this petition that in para 12 of the petition, the petitioner has made the following averments :

> "12. The petitioner submits that the petitioner has not filed any other application or petition with regard to the subject matter of this petition on any other court of law, including the Hon'ble Supreme Court of India, except what is stated hereinabove."

Though the petitioner has made such a statement in para 12 of the petition quoted hereinabove, the petitioner has not disclosed the fact that the civil suit has been filed by the petitioner before the civil court at Baroda being special civil suit no. 996 of 2000 filed on 24.6.2000. It is also necessary to note at this stage the civil suit filed by respondent No.4 Samaj being special civil suit No. 585 of 2000 dated 30.6.2000 is also known to the petitioner and at the time of filing of the present petition, the petitioner was well aware of the said proceedings before the civil court and yet said facts have not been disclosed by the petitioner in this petition. One important aspect is also required to be noted that in para 9, last line of the said paragraph, the petitioner has made a mention that one special civil application no. 8352 of 2000 has been filed by the

petitioner and the same is pending before this court. It is also necessary at this stage to mention that one special civil application no. 8383 of 1988 has been filed by this petitioner Manibhai Vashrambhai Thakkar before this court which came to be dismissed by this court on 15.11.1990. However, this fact has also not been disclosed by the petitioner in this petition.

In paragraph 9(B) of special civil application, no. 8271 of 2000, the petitioner has prayed for a declaration that the Urban Land (Ceiling and Regulation) (Repeal) Act, 1999 is ultra vires to the constitution of India. In para 9(C) of the said petition, the petitioner has also prayed for issuing a writ in the nature of mandamus or in the nature of certiorari or any other appropriate writ, order or direction declaring that the Urban Land (Ceiling and Regulation) Act, 1976 is ultra vires to the constitution of India. In para 9(D) of the said petition, the petitioner has prayed for quashing and setting aside the the order passed by the Competent Authority and Dy. Collector (ULC) Vadodara dated 3.5.1983 (Annexure "A") and the order passed by the Urban Land Tribunal dated 19.2.1988 Annexure "B" and the consequential proceedings under is ec.10(1) to 10(6) of the Urban Land (Ceiling and Regulation) Act, 1976. In para 9(E) of the said petition, the petitioner has prayed for directing the respondents to delete the lands bearing revenue survey No. 83 (City S.No. 346 to 352) of village Wadiwadi District Vadodara of the petitioners from the lands on which the possession are taken over. In para 9(F) of the said petition, the petitioner has prayed for directing the respondents to provide alternative land of the same area or to provide compensation to the petitioners according to the Land Acquisition Act,if it is declared by this court that the physical, actual and legal possession is taken over by the respondents under the Act.

Said petition has been filed by the petitioners on 4th July, 2000. The question of vires raised in this petition has been examined by the division bench of this court in case of Rameshbhai Shamjibhai Raninga versus State of Gujarat in special civil application no. 6678 of 1999 and other cognate matters on 18.7.2000 and this court has come to the conclusion that sec. 3(1)(a) of the Repealing Act,1999 is constitutional and valid piece of legislation and the challenge made to it by the petitioner fails. The provisions of sec. 4 of the Repealing Act, 1999 are also held to be valid and reasonably construed in the said judgment. The Division Bench has, therefore, directed to place all the petitions

before the appropriate Single Bench or Benches for disposal on merits in light of the judgment and observations made by the Division Bench of this court in aforesaid judgment and, therefore, these special civil applications have been placed before this court after deciding the question of vires of the provisions by the division bench of this court on 31.7.2000.

In special civil application no. 9228 of 2000 which has been filed by two sons and father as stated above, in para 9(B), the petitioners have prayed for quashing and setting aside the orders passed by the competent authority dated 3.5.1983 and to quash and set aside the order of the tribunal dated 19.2.1988 and to quash and set aside the consequential proceedings under sec. 10(1) to 10(6) of the ULC Act,1976 with a further prayer to direct the respondents to make inquiry as directed by the tribunal in its judgment dated 19.2.1988 for permissible set back and its deduction from the holding of the lands of the petitioner in accordance with law. The petitioners have also prayed for quashing and setting aside the orders dated 17.5.2000 and 27.6.2000 passed by respondents no.2 and 4 granting the lands bearing revenue s.n.83 (city survey no. 346 (city survey no. 346 to 352) of village Wadiwadi, District Baroda. Then, there is further relief about deleting the lands bearing same survey number and same city survey no. means the lands in question. Last prayer is to provide alternative land or compensation under the provisions of the Land Acquisition Act. Thus, the prayers made in this group of petitions are almost similar and identical in nature and are relating to the same subject matter.

The facts of the present petitions, in short, are as under:

The petitioner Shri Manibhai Vashrambhai Thakkar is having the land in Baroda Urban Agglomeration in village Wadiwadi which is a part of Baroda, now bearing city S. No. 83 ad measuring 5400 sq. mtrs. which is excess in view of the provisions of the Urban Land (Ceiling and Regulation) Act,1976 ("the ULC Act,1976" for short). Form under sec. 6(1) of the ULC Act, 1976 was filled in by the petitioner. Draft statement under sec.8(3) of the ULC Act,1976 has been is served upon the petitioner. Thereafter, objections were filed by the petitioner against the draft statement stating that there is no excess land. The competent authority has passed the order dated 30.5.1983 declaring that there is excess land to the extent of 2522 sq. mtrs. in s.n.83. The petitioner, then, filed appeal before the tribunal which

was partly allowed under order dated 19.2.1988. Thereafter, the competent authority issued notification under sec.10(5) of the ULC Act, 1976 for taking over the possession of the land in question and also issued notice for determination of compensation under section 11 of the ULC Act,1976 but according to the petitioner, said compensation has not been paid to the petitioner. The petitioner has also approached the Government for review of the order passed by the Competent Authority and has also submitted form NO.5 under sec. 21 (1) declaring intention to construct residential unit for weaker section of the society. The petitioner has also relied upon the Repeal Act, 1999 and the Government Reso. dated 15.4.1999. Said orderof the tribunal has also been challenged by the petitioner before this court by filing special civil application no. 8383 of 1988 wherein on 15th November, 1990, following order was passed by this court:

> "The land has already vested in the Government because of the notification under section 10(3) of the Act and possession has already been taken over. Now, it is too late for the petitioner to raise a contention that his particular portion of land was a vacant land and, therefore, the order of the competent authority in that behalf be treated as improper or illegal. This petition is, therefore, rejected summarily. Notice is discharged with no order as to costs. "

The petitioner has contended that the Government has allotted the said land to the respondent Samaj which is a private trust duly registered under the Bombay Public Trusts Act on 17.5.2000 and, therefore, the petitioner has challenged the action of allotment of land to the said respondent Samaj on the ground that the same is contrary to the provisions of the resolution dated 15.4.1999 and is also contrary to the provisions of sec. 23 of the ULC Act, 1976. The petitioner has also challenged the allotment of the land in question to respondent Samaj on the ground that it has been made after the Repealing Act, 1999 and, therefore, same is against the basic object and design of the Principal Act as well as against the Government Resolution dated 15.4.1999. At this juncture, it is necessary to note that the application submitted by the petitioner under sec. 21 (1) in Form 5 of the ULC Act 1976 has been ordered to be filed by the competent authority by order dated 14.4.1983 on the ground that the scheme has not

been submitted by the petitioner within the prescribed time limit. However,this fact has not been disclosed by the petitioner in the present proceedings. The petitioner has also not disclosed the fact of filing of special civil application no. 8383 of 1988 and disposal of the said petition by this court on 15.11.1990.

Respondent Samaj has filed affidavit in reply to the present petition challenging the averments made by the petitioner. It has been inter alia contended by the respondent Samaj that the petitioner has no locus standi to challenge the Government's decision dated 17.5.2000 wherein the land has been allotted to the respondent Samaj. It has also been contended that after the land was declared surplus and the Government had taken possession of the land in question as per notification under sec.10(5) of the ULC Act, the petitioner is having no locus standi to challenge the action of the Government of disposal of the land in question and the decision of the Government has become final and conclusive. It is also contended that once the land has been disposed of by the Government, the erstwhile owner has nothing to do with the same after the same was disposed of by the Government. Respondent No.4 has also contended that eventhoughthe Government has committed any irregularity in the disposal of the land, then also, the petitioner is having no locus standi to challenge the same. It is also contended that the respondent Samaj has filed special civil suit no. 585 of 2000 on 30.6.2000 wherein interim relief has been granted by the civil court on 1.7.2000 in favour of the respondent Samaj as per paragraph 7(A) of the said suit and the returnable date was 13thJuly, 2000 and notice of interim stay was served to the petitioner on or before 13.7.2000. Respondent Samaj has also made it clear that one civil suit is also filed by the petitioner wherein panchanama was made and that panchanama was misleading the court. Said special civil suit has been filed on 24.6.2000 by the petitioner without impleading respondent Samaj as a party to the said suit. In view of these submissions, respondent Samaj has also submitted that the petitions are required to be dismissed on the ground of suppression of material facts as per the law laid down in AIR 1978 SC 1814; 1998 (3) GCD 1783; 1996 (3) GCD 615; 1996 (1) GLR 741. It is also made clear by respondent no.4 Samaj that the possession of the land in question is with respondent Samaj and the Samaj has constructed compound wall and has also constructed room and spent 1/50 lacs in the development of the land and has submitted that the construction is in progress.

In reply to the affidavit in reply filed by the respondent Samaj, the petitioner has filed affidavit in rejoinder wherein the petitioner has submitted that the civil suit has been filed by the petitioner before the civil court on 21.6.2000 and on 24.6.2000 panchanama has been drawn by the Court Commissioner. In the said rejoinder, the petitioner has placed reliance upon certain pronouncements of the apex court wherein the object and reason has been specified while enacting the law by the Parliament. It has also been submitted by the petitioner that the object of section 23 (1) of the ULC Act,1976 has been considered by the apex court in Bhim Singhji v. Union of India reported in AIR 1981 SC 234. The objection of the petitioner is that the allotment of the land in question is not for public purpose and it cannot be considered to be common good. It is also submitted that the allotment to respondent NO.4 Samaj is meant for a particular community in a particular area of Gujarat and that too it has been made under the influence of Shri Dilip Patel, Minister holding important portfolio in the Government of Gujarat and, therefore, it is submitted that it cannot be said that the land is allotted for public purpose. At this stage, it is also necessary to consider the prayer which has been made in civil suit filed by him. In para 9(A), the petitioner has prayed that the land in question is in possession of the petitioner and, therefore, the respondents, their agents, servants etc. be restrained from disturbing the possession of the petitioner. In the civil suit, the petitioner has also prayed for quashing and setting aside the notification under sec.10(1) to 10(6) of the ULC Act,1976 including sec. 11 and has also prayed for declaring that the provisions of the ULC Act,1976 are not applicable to the land in question. The petitioner has also produced letter of the competent authority dated 14.4.1983 in respect of the application submitted by the petitioner under section 21(1) of the ULC Act, 1976 wherein the order has been passed by the competent authority to dispose of the said application without granting any order in favour of the petitioner on 14.4.1983. Said order has not been challenged by the petitioner before any higher forum and that fact has not been disclosed by the petitioner in the petition also.

It is necessary to note one aspect that in reply to the averments made by the respondent Samaj in its affidavit in reply, the petitioner has submitted detailed affidavit in rejoinder. However, the petitioner has not given any satisfactory explanation about the suppression of important aspects and material facts. The petition was filed before this Court on 24thJuly, 200 and in the

petition, rule has been issued and interim relief has been granted on 27thJuly, 2000. Civil Suit No. 996 of 2000 has been filed on 21.6.2000. On or before 13th July,2000, the petitioner was served with the notice of interim stay granted by the civil court, Baroda in the civil suit filed in the civil court, Baroda which suit was filed by the respondent Samaj. However, filing of these suits and pendency thereof has not been disclosed in the petition and even no explanation for that has been given in the rejoinder. Yet, the petitioner has an audacity to assert in para 12 of the petition that the petitioner has not filed any other application or petition with regard to the subject matter of this petition in any other court of law including the Hon'ble Supreme Court of India, except what is stated in the petition. In petition, nothing has been stated in that regard. It is, therefore, clear that the petitioner is guilty of suppression of material facts. In view of the averments made in para 12 of the petition, and also in view of what is stated above, it is clear that the petitioner has suppressio very and suggestio falsi.

Another aspect is that the order of the competent authority has been challenged by the petitioner before this court by filing special civil application no. 8383 of 1988 which has been rejected by this court on 15.11.1990 by order which is quoted hereinabove and yet, in the petition, there is not a single word in that regard, stated by the petitioner. In regard to suppression of these material facts, though specifically pleaded by the respondent No.4 Samaj in its affidavit in reply, the petitioner has not come forward with any explanation in its affidavit in rejoinder. Mere admission of fact without any explanation in that regard is not sufficient for getting rid of the charge of suppression of material facts.

Other two petitions namely special civil application Nos. 8271 of 2000 and 9228 of 2000 have been filed by another advocate namely learned advocate Shri K.K.Trivedi wherein one petition is filed by the very same petitioner and other petition is filed by two sons and father. In these two petitions also, challenge is the same order passed by the Government allotting the land on lease in favour of the respondent Samaj. No doubt, in group of these two petitions, in special civil application No. 9228 of 2000, the petitioner has disclosed about filing of special civil application No. 8383 of 1988 which has been disposed of by this court on 15.11.1990.

Taking into consideration the of facts of these three petitions, the questions which are required to be examined by this Court are as under:

1) Whether the petitioners are entitled to challenge the order passed by the competent authority in respect of the land in question dated 3.5.1983 , the order of the tribunal dated 19.2.1988 and whether the petitioners have any locus to challenge the order of allotment of the land in question on lease in favour of the respondent Samaj, dated 17.5.2000 in view of the provisions of the Repealing Act, 1999 ?

2) Whether the petitioners are having any locus standi to challenge such action when the possession of the land in question has already been taken over by the State Government and the said order has been finally decided by this Court in special civil application no. 8383 of 1988 ?

3) Whether the petitioner in special civil application NO. 8261 of 2000 has suppressed material facts from this Court as alleged by the respondents in their affidavit in reply and whether the said petitioner is guilty of suppression of material facts?

4) Whether the petitioner Shri Manibhai V. Thakkar is entitled to challenge the order passed by the competent authority and tribunal in respect of the land in question which order has become final by the decision of this Court, after the period of about 12 years on the ground that they are entitled to be heard and they are entitled to have interest in the land in question ?

5) In view of the pendency of the civil suits referred to hereinabove, whether the present petitions are maintainable or not and and in such a situation, whether the petitioners are entitled to get any relief/s from this Court in this petition?

I have heard learned advocate Mr. B.T. Rao as well as learned advocate Mr. K.K.Trivedi for the petitioners herein.I have also heard Mr. A.J.Patel,learned advocate for the respondent Samaj. I have also heard the learned AGP Ms.Hansa Punani who has appeared for the respondent authorities in these petitions.

Learned advocate Mr. Rao has submitted that the petitioners have not been paid the compensation in respect of the land in question and, therefore, the petitioners are entitled to challenge the orders passed by the competent authority as well as the tribunal and as such, are also entitled to challenge the notification under sec.10 of the ULC Act, 1976. He has further submitted that the non payment of compensation would also entitle the petitioners to challenge the orders of allotment of the land in question in favour of the respondent Samaj dated 17.5.2000. He has also submitted that the allotment of the land on lease to Samaj is contrary to the Object of Sec. 23 and the application submitted by the petitioner under sec. 21(1) of the Act has been disposed of by the authority without any genuine cause. He has also submitted that after the Repealing Act, 1999, the Government has no power to allot the land in question to the respondent Samaj in view of the guidelines issued by the State of Gujarat dated 15.4.1999 and, therefore, the action of the State in allotting the land in question on lease to the respondent Samaj is contrary to the Object and purposes of the ULC Act, 1976 as well as sec. 23 and the guidelines dated 15.4.1999. He has relied upon certain judicial pronouncements of the apex court reported in AIR 1981 SC 324; 1991 SCC 318; 1995 (6) SCC 31; 1995 Supp. (2) SCC 650 and AIR 1977 Gujarat 113; AIR 1972 Patna 164; AIR 1979 Rajastan 58; AIR 1964 Calcutta 80; AIR 1970 Punjab & Haryana page 539 and has submitted that the petitioner is entitled to challenge the action since the compensation has not been paid to the petitioners under sec. 11 of the Act and, therefore, it is yet open for the petitioners to challenge the action taken by the respondent authorities against the petitioner declaring excess land under the provisions of the ULC Act, 1976.

Mr. Trivedi, the learned advocate appearing for the petitioners in special civil applications no. 8271 of 2000 and 9228 of 2000 has submitted that the sons are entitled to challenge the very same orders which have been passed against their father on the ground that the sons are having share in properties and the sons were not heard by the competent authority and, therefore, the orders impugned herein are nullity and contrary to the principles of natural justice and liable to be quashed and set aside. He has relied upon the judgment of this court in case of State of Gujarat versus Fuliben Ranchhodbhai in special civil application no. 4987 of 1999 decided by this court (Coram : Y.B.Bhatt,J.) on 13.7.1999. Reliance has also been placed upon the

judgment of this court reported in 1995 (1) GLR page 457. After placing reliance on the aforesaid judgments, he has submitted that the authorities are required to observe the principles of natural justice. According to him, nobody take notice if the matters are published in the Government Gazette and so, a citizen cannot be deprived of his right simply because he has not rushed in the court soon after the publication of the orders in the Government Gazette. He has relied upon the observations of this Court made in para 5 of the judgment in case of Maneklal Mulchand Patel and others v. Competent authority and Addl. Collector, ULC, Ahmedabad and another, reported in 1995 (1) GLR 457 and has submitted that the share of the petitioners - sons has been declared surplus and it would mean that the petitioners are deprived of their share without having any opportunity of being heard and, therefore, the petitioners are entitled to get the reliefs prayed for in these petitions. In the said decision, it has also been observed that it can certainly be styled as deprivation of the property of the deceased and now the present petitioners without any authority of law. Such action on the part of the concerned authority cannot be sustained in law even for a moment. If that means putting the hands of the clock to the original position,it has to be done unless an irreversible situation had arisen by allotment of the entire area of the disputed land in favour of the other persons on account of default, lapse, laches or negligence on the part of the landholder. In the present case, the order of the competent authority was passed in the year 1983 and the tribunal passed order in the year 1988 which is now challenged in the year 2000 and meanwhile, allotment of the land in question has already been ordered to be made in favour of the respondent Samaj and there are lapses, laches and or negligence on the part of the sons of the petitioner-land holder. The said decision 1995 (1) GLR 457 is not helpful to the sons-petitioners.

Learned advocate Mr. A.J. Patel appearing for the respondent Samaj has submitted that the petitioners are not entitled for any reliefs as prayed for in this group of petitions nor are they entitled to challenge the action of the respondent authority or the tribunal or to challenge the action of allotment of the land in question in favour of the respondent Samaj. According to him, the petitioners have no any locus standi to challenge such action of the State Government to allot the said lands in favour of the respondent Samaj in view of the fact that the challenge against the order of the competent authority as well as the tribunal has failed and those

orders have attained finality in view of the orders passed by this court in special civil application No.8383 of 1988, by order dated 15.11.1990 wherein the fact of possession of the land in question has been made clear that the possession has been taken over by the Government and, therefore, the Government was having the possession of the land in question in the year 1988 under the provisions of the ULC Act,1976 and as such, the petitioners have no locus standi to have any challenge against it. Relying upon the provisions of the Repealing Act, 1999, he has also submitted that considering the effect of the Repealing Act,1999, all these three petitions are required to be dismissed and the provisions of the Repealing Act, 1999 shall prevail. Section 3 sub clause (1) Repeal of the Principal Act shall not affect the vesting of any vacant land under sec.10(3) possession of which has been taken over by the Government or any person duly authorized by the competent authority in this behalf, or by the competent authority. Relying upon the said provisions, Mr. Patel has submitted that if the possession has been taken over by the State Government, that will not adversely affect the right of the Government and he distinguished the provisions of sec. 3(2) where any land is deemed to vested in the State Government under sec.10(3) of the Principal Act but possession of which has not been taken over by the State Government or by the person duly authorized by the State Government or by the competent authority and (b) any amount has been paid by the State Government with respect to such land then, such land shall not be restored unless the amount paid if any has been refunded to the State Government and, therefore, Mr. Patel has submitted that there are two separate provisions made in the Repealing Act under section 3(1) and (2) Sub section (1) relates to the case of possession which has been taken over by the State Government and section 3(2) relates to deeming provision with respect vesting of the land in the Government but possession of which has not been taken over by the Government and, therefore, Mr. Patel has submitted that the question of compensation is not at all relevant since the possession of the land in question has already been taken over by the Government and, therefore, as per the provisions of section 3(1), these petitions cannot be entertained by this court for the relief of restoration of the possession of the land in question because of the non payment of compensation to the petitioners by the State Government. Mr. Patel has also submitted about the contention in respect of suppression of the facts and about alternative remedy availed by the petitioners. He has submitted that the petitioners have suppressed material facts from this court. He has

submitted that the order which has been passed in favour of the respondent-Samaj by the State Government is not an order under section 23 of the ULC Act, 1976 but it is under section 37 of the Bombay Land Revenue Code. Same was the submission of Ms. Punani, learned AGP appearing for the respondent authorities that the said order has not been passed under sec. 23 of the ULC Act, 1976 but it has been passed under section 37 of the Bombay Land Revenue Code and the possession has also been taken over by the State Government and, therefore, according to Ms. Punani, all these petitions are required to be dismissed.

I have considered the submissions of the learned advocates for the respective parties. The petitioner in special civil application no. 8261 of 2000 namely Manilal Vashram Thakkar has filed the civil suit no. 996 of 2000 in the civil court at Baroda on 21.6.2000 in the same subject matter and on the same cause of action and the prayers are also same. Thus, in the civil suit as well as in the present petitions, subject matter is the same. It may be worded in a different manner but in substance, it will remain the same.

As regards suppression, the petitioner has suppressed three facts namely though the civil suit no. 996 of 2000 has been filed on 21.6.2000; second civil suit being civil suit no. 585/2000 filed by the respondent Samaj and filing of special civil application no. 8383 of 1988 as well as the decision therein dated 15.11.1990. Nowhere in the petition, the petitioner Manibhai Vashrambhai Thakkar has disclosed about these proceedings. If these facts would have been disclosed by the petitioner, then, whether such disclosure would have any bearing in grant of relief or not is relevant for the consideration of this court. According to my view, all these facts were material which would have gone against the petitioner if it would have been disclosed in the petition. However, that would have saved the petitioner from becoming guilty of suppression of material facts. I am, therefore, of the view that this is not a simple and bona fide suppression or suppression through over sight or that these facts were not within the knowledge of the petitioners at the time of filing of the petition but the facts have been suppressed with a view that some reliefs are obtained ex parte and, therefore, such conduct of the petitioners cannot be encouraged and this fact alone is sufficient for rejecting these petitions. The petitioners have not come with clean hands and, therefore, they are not entitled to any discretionary reliefs from this Court in exercise of the powers under Article 226 or 227 of the Constitution of India. It is

also necessary to note that when a party approaches the court, then, conduct of such a party is also an important factor which is required to be taken into consideration while granting reliefs and therefore, taking into consideration the conduct of the petitioners herein, the petitioners are not entitled to the reliefs as prayed for and it was known the petitioners that special civil application no. 8383 was filed in the year 1988 by Manilal Vashram Thakkar and even though that fact of special civil application No. 8383 of 1988 has not been disclosed in this petition and though the order of the competent authority has been confirmed by this court in aforesaid petition by order dated 15.11.1990, the petitioners have come with a relief that the notification under sec. 10(1) to 10(6) should be quashed and set aside by this court. It should also be noted that in respect of the very same subject matter, the petitioner has approached the civil court and the civil court has issued notice to the respondents and similarly, the respondent Samaj has also filed the suit as stated above which is pending and the interim orders passed therein are also operating in favour of the respondent Samaj and, therefore, the petitioners have already availed of the alternative remedy. The third aspect is that in light of the provisions of section 3 of the Repealing Act, 1999, as also taking into consideration the fact that the possession of the land in question has already been taken over by the State Government as per order dated 15.11.1990 passed by this court in special civil application no. 8383 of 1988, these petitions cannot be entertained by this court. Fourth aspect is that the petitioners have no locus standi to challenge the action which has become final in view of the decision of this court in special civil application no. 8383 of 1988. Said order passed by the learned single Judge of this court has not been taken further before the higher forum and as such, it has become final. The petitioners cannot be permitted to again challenge the very same order which once has been challenged by the petitioner M.V.Thakkar. Now, said petitioner cannot be permitted to challenge the very same orders of the competent authority in the name of his sons. It can be said that the very same petitioner is challenging the very same orders through his sons and, therefore, such a challenge cannot be entertained by this court, on the ground that the sons were not heard by the competent authority though they are having legal share in the property in question. This question was examined by the competent authority and it was raised before the authority by the petitioner father and the competent authority has come to the conclusion that it is self acquired property of the petitioner

Manibhai Vashrambhai Thakkar and, therefore, considering the provisions of section 2(i) of the ULC Act,1976,it has to be considered as a property of one person and the contentions raised by the petitioner Manibhai were rejected by the competent authority vide order dated 30.5.1983 and, therefore, now it is not open for the sons of said Manibhai Vashram Thakkar to agitate the very same questions by way of these petitions after the period of about 12 years since the decision of the competent authority as well as the tribunal have become final. It is more so when the possession has also been taken over long ago as observed by this court in its order dated 15.11.1990 passed in special civil application no. 8383 of 1988.

Fifth circumstance is that the possession of the land in question has been taken over by the State Government and therefore,the petitioners have no any legal right to challenge the action of the Government in respect of allotment of the land on lease in favour of the respondent Samaj because the petitioners are now not having any interest, right or title in the lands in question once it is considered to be excess land by the competent authority and necessary legal formalities have been followed and as a result thereof, possession has also been taken over by the State Government and, therefore, the petitioners now cannot be permitted to challenge the action of the Government for allotment of the land in question in favour of the respondent Samaj. Hence the petitioners are not entitled to challenge the action of the Government as they are not having locus standi for challenging the action of the State Government.

It is settled law laid down by the apex court that the High Court should not interfere in exercise of its extraordinary jurisdiction to grant relief to the petitioner when the petitioner is having alternative remedy. It is also equally settled that when the petition under Article 226 of the Constitution of India is involving disputed questions of fact, such petition should not be entertained. Such questions of fact raised by the petitioner and disputed by the other side cannot be appropriately dealt with and decided under Article 226 of the Constitution of India. In AIR 1977 SC 898, it has been observed by the apex court that;

> "in our mind, the appellant cannot be permitted to pursue two parallel remedies in respect of the same matter at the same time."

Recently, in case of Tarulata D.Jani versus State of Gujarat reported in 1999 (1) GLH 128, division bench of this Court has observed that the petition under Article 226 is not maintainable once the litigant has chosen to prosecute the proceedings by way of civil suit and the suit or appeal arising from such a suit is pending. Once the litigant has submitted to the jurisdiction of one forum which is competent to grant the reliefs, then, the other forum ordinarily would not entertain such proceedings. In case of SP Gupta and others versus President of India, reported in AIR 1982 SC 149,Full Bench of the apex court has considered the question of locus standi in detail and has observed that the traditional rule in regard to locus standi is that the judicial redress is available only to a person who has suffered legal injury by reason of violation of his legal right or legally protected interest by the impugned action of the State or public authority or any other person or who is likely to suffer legal injury by reason of threatened violation of legal right or legally protected interest by any such action. The basis of entitlement to judicial redress is personal injury to a property, body, mind or reputation arising from the violation actual or threatened of the legal right or legally protected right, interest of the person seeking such redress. A person aggrieved must be a man who has suffered legal grievance, man against whom decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his right, title to something.

In case of KK Srinivasan versus Bhupendra Kumar Jain, reported in AIR 1977 SC 1703, it has been observed by the apex court that it is well settled that the Art. 226 confers vide powers on the High Court. There are equally well settled limitations which this court has repeatedly pointed out on the exercise of such power. One of them which is relevant for the present case is that where there is appropriate or equally efficacious remedy, the Court should keep its hand off, otherwise, exercise of powers under Article 226 of the Constitution may be described as misexercise. It is further observed by the apex court that it is unfortunate that the election petition which probably would have been disposed of long ago is still pending because writ petition was pending in the High Court and later on the special leave petition having been granted, the appeals have been pending in this court. This situation has also been considered in case of Major Chandrabhan Singh versus Latafat Ullahkhan reported in AIR 1978 SC 1814.

In case of SW Mistry c/o. District Panchayat, Kheda versus District Development Officer, 1996 (3) GCD 615, Gujarat, this court has observed that it is a case where the petitioner has made an attempt to conceal material facts from this court. The petitioner has concealed the fact that the penalty of removal from services was imposed on him which order has been et aside by the tribunal and on remand the competent authority substituted the penalty of removal from service by some lesser penalty. This fact of remand was concealed by the petitioner. The petitioner should have stated these facts in the writ petition. Concealment of the same disentitled the petitioner from getting any equitable relief from this court.

In case of Laxmi, widow of Vasu Ganesh and others versus KK Nair and others, reported in 1999 (1) GLH page 754, this court has observed the maintainability of writ petition under Article 226. The civil suit filed earlier for the same cause of action, for the same reliefs. The respondents objected as to maintainability of the civil suit. Then, the civil suit was withdrawn by filing purshis. It was observed that the trial court has not decided the question as to maintainability of the suit and as such, it was held that the writ petition on the same cause of action not maintainable. The principles analogous to the Code of Civil Procedure made applicable to the writ petitions. In case of Maganlal Mepabhai Patel versus Competent authority and Ex Officio Addl. Collector, reported in 1999 (2) GLH, 350, this court has considered the effect of Repealing Act, 1999 wherein this court has considered the intention of the legislature to cut short all pending proceedings and that intention of the legislation is clear. Relevant observations made in para 10 and 12 of the said decision are reproduced as under:

"In the context of the aforesaid submission, I am of the opinion that it makes no difference whether the jurisdiction of this court is derived from the statute or is derived from a specific provision of the Constitution. The fact remains that even while exercising jurisdiction under Article 226 of the Constitution of India, this court can exercise whatever jurisdiction it has under this Article, while remaining bound by the parameters of the statute. In other words, even the High Court's jurisdiction under Article 226 of the Constitution of India, whether we call it a constitutional jurisdiction or a discretionary

jurisdiction or a writ jurisdiction, it is not beyond the statute. Thus, if section 4 creates the mandate in respect of abatement of all pending proceedings, I am of the opinion that such mandate would apply even to the High Court exercising its writ jurisdiction under Article 226. Even otherwise, the phrase "before any court, tribunal, or other authority" is sufficiently wide to indicate the intention of the Parliament so as to cover all pending proceedings, irrespective of the forum where they were pending and irrespective of the nature of jurisdiction which that forum would be exercising.

11. xxx xxx xxx

12. However, there is another perspective available, to test the aforesaid submission. As is well known, almost all statutes create procedural rights in favour of a party or a citizen, where his grievances can be redressed either by way of appeal or revision. It is also well known that under a given statute a second appeal arising from a first appellate order is permissible, whereas under some other statute such a second appeal is not permissible. Furthermore, a remedy by way of a revision is not available under all statutes. In other words, what remedies shall be available to an aggrieved party is determined by the statute and not by the equities of the matter. It is for the Legislature in its wisdom to determine what procedural remedies by way of appeal or revision or review should be made available to an aggrieved party. In a given case under a given statute merely because a remedy is not available, does not necessarily mean that the absence of such a procedural remedy renders the statute inequitable. Even if such a position can be considered to be inequitable, it is after all a reflection of the wisdom of the Legislature and it is not for the Courts to go beyond or question such wisdom. When section 4 is tested in the context of this submission, the only conclusion which can be drawn is that it was the intention of the Legislature to cut short all pending proceedings which arose from orders made under the Act of 1976. This intention is both firm and clear on a plain reading of section 4. It would, therefore, be incongruous to accept such a

submission and to hold that because the remedy is cut short (by saving the rights created by the impugned orders), the statute is inequitable and therefore, requires to be re-read or reinterpreted."

As regards the contention about the locus standi of the petitioners, it is necessary to be considered that the words "person aggrieved" do not really mean who is aggrieved by a benefit which he would have received if some other order had been made. A person aggrieved must be a man who has suffered legal grievance, a man against whom decision had been pronounced which has wrongfully deprived or wrongfully refused him something or wrongfully affected his title to something. If there are two modes of invoking the jurisdiction of the High Court and one of those modes has been chosen and exhausted, then, it would not be a proper and sound exercise of discretion to grant relief in respect of the same order or subject matter and refusal to grant relief in such circumstances would be in consonance with the anxiety of the Court to prevent abuse of process as also respect and accord finality to its own decision. In case of Shankar Ram Chandra versus Krishnaji reported in AIR 1970 SC 1, the apex court has observed that A has filed the suit for possession against B in the Small Causes Court and obtained decree. Appeal filed by B was dismissed and revision under sec. 115 of the Code of Civil Procedure also came to be dismissed by the High Court. Then, B instituted writ petition under Article 226 and/or 227 of the Constitution of India challenging the order of the appellate court. In that case, the division bench allowed the said petition and the matter was, then, carried before the Supreme Court. Allowing the appeal, it was held by the apex court that the petitioner had already filed revision application under section 115 of the Code of Civil Procedure and obtained order. The order passed by the subordinate court merged into the order passed by the High Court in revision and thereafter, no writ petition under Article 226/227 of the Constitution of India was maintainable.

Considering the facts and merits of the matter, the petitioner has not been denied or deprived of any legal right. The petitioner has also not sustained any injury to any legally protected right or interest. The petitioner has not been subjected to any wrong and has suffered no legal grievance. The petitioner has also no legal peg justiciable claim to hand on while a prorusteam approach should be avoided as a rule. The Court should

not interfere at the instance of the petitioner unless there are exceptional circumstances involving grave miscarriage of justice having adverse impact on public interest and, therefore, the petitioners had no locus standi to invoke the extra ordinary jurisdiction under Article 226 of the Constitution of India and, therefore also, the petitioners are not entitled to any reliefs prayed for in these petitions.

It should be kept in mind that the powers conferred on the Court under Article 226 of the Constitution of India are curative in nature and cannot be construed as a powers which would authorize the court to ignore substantive rights of the litigants while dealing with the cause pending before it

Therefore, in view of the aforesaid legal position flowing from the decision cited at the bar and also after considering the decisions cited by Mr. Rao, learned advocate for the petitioner, as per my opinion, these petitions are required to be dismissed on the ground that the petitions suffer from the vice of suppression of material facts from the court while obtaining initial orders as stated hereinabove. The petitioner in special civil application no. 8261 of 2000 namely Shri Manibhai Vashrambhai Thakkar has not disclosed the fact about filing of one civil suit by him in the civil court. He has also not disclosed the filing of one civil suit against him by the respondent Samaj. The said petitioner has also not disclosed the fact of challenge made to the orders of the competent authority in special civil application no. 8383 of 1988 and also about the orders passed by this court in the said petition on 15.11.1990. All these facts have not been disclosed by the petitioner. Secondly, the petitioners have no locus standi in respect of all the three petitions in respect of the fact that the said question has already been finally concluded by this court and challenge to the orders of the competent authority as well as the tribunal has attained finality and the possession has also been taken over by the State Government as observed by this court in order dated 15.11.1990 in special civil application no. 8383 of 1988 and in view of the provisions of section 3(1)(a) of the Repealing Act, 1999, the petitioners are not entitled to challenge the action of the State Govt. of allotment of the land in question to the respondent Samaj because now the petitioners have no any legal right or authority to challenge the same. The petitioners have also no right or interest, title or interest therein. There is no any legal injury caused to the petitioners and, therefore,

the petitioners have no locus standi to file such petitions. Thirdly, in view of the pendency of the two civil suits referred to hereinabove, one filed by petitioner Manibhai Vashrambhai Thakkar and another filed by the respondent Samaj in the same subject matter of these petitions, these petitions are not maintainable, on the ground of alternative remedy before the civil court and also since the possession has also been taken over since long, the petitioners are now not entitled to challenge the action of the State Government in allotting the land in question by order dated 17.5.2000 in favour of respondent Samaj on lease.

In view of the above discussion, all these petitions are required to be dismissed. Accordingly, all these petitions are dismissed. Rule in special civil application No. 8261 of 2000 shall stand discharged. Interim relief granted in the said petition shall also stand vacated. There shall be no order as to costs.

In view of the orders passed in special civil application No. 8261 of 2000, civil application no. 7095 of 2000 filed by respondent No. 4 Samaj in the said petition shall not survive. Same shall, therefore, stand disposed of as not surviving. There shall be no order as to costs.

4.10.2000. (H.K. Rathod,J.)

Vyas

After the aforesaid judgment has been pronounced in the open Court today, learned advocate Mr. Rao appearing for the petitioner in special civil application No. 8261 of 2000 has requested that the interim relief granted earlier in the said petition may be ordered to continue for some period so as to enable the petitioner to approach the higher forum. The request made by Mr.Rao has been opposed by Mr. Patel, learned advocate for the respondent No.4 Samaj. However, in the facts and circumstances of the case, in the interest of justice, the status quo qua possession as on today shall continue to operate till 13.11.2000 in so far as the said petition is concerned.

4.10.2000 (H.K.Rathod,J.)

Vyas